



UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JOSE JESUS LAGUNA,
Petitioner,

v.

C. GIPSON, Warden,
Respondent.

Case No. ED CV 12-0866 JFW (JCG)

**ORDER ACCEPTING REPORT AND
RECOMMENDATION OF UNITED
STATES MAGISTRATE JUDGE AND
DENYING CERTIFICATE OF
APPEALABILITY**

Pursuant to 28 U.S.C. § 636, the Court has reviewed the Petition, the Magistrate Judge's Report and Recommendation, Petitioner's Objections to the Report and Recommendation, and the remaining record, and has made a *de novo* determination.

Petitioner's Objections generally reiterate the arguments made in the Petition, and lack merit for the reasons set forth in the Report and Recommendation. There is one issue, however, that warrants brief amplification here.

In his Objections, Petitioner argues that he is entitled to a *per se* presumption that he was prejudiced by his trial counsel's alleged errors. Petitioner is mistaken. Generally, a petitioner is exempted from the prejudice requirement of *Strickland v. Washington*, 466 U.S. 668 (1984), only where "the likelihood that counsel could have performed as an effective adversary [i]s so remote as to have made the trial inherently unfair," or where "counsel entirely fail[ed] to subject the prosecution's case to

1 meaningful adversarial testing,” thus rendering “the adversary process itself
2 presumptively unreliable.” *United States v. Cronin*, 466 U.S. 648, 659-61 (1984).
3 Here, however, Petitioner has presented no evidence that “there [was] an actual
4 breakdown in the adversarial process at trial” as would allow a presumption of
5 prejudice. *See Toomey v. Bunnell*, 898 F.2d 741, 744 n.2 (9th Cir.) (citing *Cronin*, 466
6 U.S. at 659).

7 Accordingly, IT IS ORDERED THAT:

- 8 1. The Report and Recommendation is approved and accepted;
- 9 2. Judgment be entered denying the Petition and dismissing this action with
10 prejudice; and
- 11 3. The Clerk serve copies of this Order on the parties.

12 Additionally, for the reasons set forth above and in the Report and
13 Recommendation, the Court finds that Petitioner has not made a substantial showing
14 of the denial of a constitutional right. *See* 28 U.S.C. § 2253; Fed. R. App. P. 22(b);
15 *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003). Thus, the Court declines to issue a
16 certificate of appealability.

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18 DATED: August 11, 2014

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HON. JOHN F. WALTER
UNITED STATES DISTRICT JUDGE